

**HB**

**201**

**HFIN**

**FILE**

(11)

# HOUSE COMMITTEE REPORT

Date Referred to Committee: April 22, 1999

FURTHER REFERRALS:

Date of Committee Action: 4/22/99

The FINANCE Committee considered:

HB 201

HOUSE BILL NO. 201

OVERTIME COMPENSATION COMPUTATION

"An Act relating to the computation of overtime; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 201 (Fin)  the same title  a new title

additional referral to \_\_\_\_\_ Committee  
 attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) \_\_\_\_\_ APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_  
 fiscal note(s) \_\_\_\_\_  fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  zero fiscal note(s) DOB 4/22/99

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<u>Gene Therriault</u> Therriault			X	
<u>Don Mulder</u> Mulder	✓			
<u>Don Bunde</u> Bunde		✓		
<u>Eric Kohring</u> Kohring	X			
<u>Don Quistman</u> Quistman	X			
<u>John Davies</u> Davies				X
<u>Ben Grussendorf</u> Grussendorf			X	
<u>Carl P. Moses</u> Moses	X			
<u>Gary Davis</u> Gary Davis	X			
<u>Bill Williams</u> Williams			X	
<u>Bob Foster</u> Foster	X			

CHAIR'S SIGNATURE

Gene Therriault Don Mulder

# FISCAL NOTE

**STATE OF ALASKA**  
**1999 LEGISLATIVE SESSION**

**BILL NO.** HB 201

Revision Date/Time (Note if correction): \_\_\_\_\_  
 Title: Overtime Compensation  
 Computation: \_\_\_\_\_  
 Sponsor: (H) L&C  
 Requester: (H) L&C

Department Affected: Labor  
 BRU: Labor Standards & Safety  
 Component: Wage and Hour  
 COMPONENT SERIAL NO. 345

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS & CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>CAPITAL</b>						
<b>CHANGE IN REVENUE</b>	0.0	0.0	0.0	0.0	0.0	0.0
<b>FUND SOURCE #</b>						

**FUNDING:** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other (Specify Type)						
<b>TOTAL</b>	0.0	0.0	0.0	0.0	0.0	0.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY99) impact: \$ None

**ANALYSIS:** (Attach a separate page if necessary)

This bill codifies longstanding state policy and practice regarding how daily hours worked are counted when computing weekly overtime.

Prepared by: Ale W. Dwyer, Director *[Signature]* Phone: 485-4855  
 Division: Labor Standards & Safety Date/Time: 4/19/99 8:08 AM  
 Approved by Commissioner: Ed Flanagan, Commissioner *[Signature]*  
 Agency: Department of Labor Date: 4/19/99

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# ALASKA STATE LEGISLATURE

## HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman  
Representative Andrew Halcro, Vice-Chairman  
Representative John Harris  
Representative Lisa Murkowski  
Representative Jerry Sanders  
Representative Tom Brice  
Representative Sharon Cisma



State Capitol  
Juneau, AK 99801-1182  
Telephone: (907) 465-4954  
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### SPONSOR STATEMENT HOUSE BILL 201

An Act relating to the computation of overtime; and providing for an effective date.

House Bill 201 would clarify a recent court decision that rules that overtime hours are to be calculated differently than they have historically been under AS 23.10.060(b).

The court's decision is contrary to the interpretation always used by Alaska's Department of Labor and to the understanding of Alaska's employers. The court's decision has ignored the historical application by Labor and all employers in the State.

The best way to bring the problem to the forefront is to give an example of what will happen under the court's decision:

Assume Employee worked the following schedule for a total of 43 hours:

Monday	11 hours	Thursday	8 hours
Tuesday	8 hours	Friday	8 hours
Wednesday	8 hours		

As to Monday, everyone agrees that Employee is entitled to 3 hours of overtime. The issue is as to Friday. Under the Department's interpretation and the interpretation of employers, no overtime would be due as to Friday since Employee worked 43 hours during the week and has already been paid for 3 hours overtime. *Under the Court's ruling, Employee would receive overtime for 3 hours on Friday because in computing the 40 hours under the statute, one must include the 3 overtime hours worked on Monday. Consequently, Employee received 6 hours of overtime pay for the week even though he/she only worked 43 hours.*

HB 201 would clarify that the Employee above would only receive pay for the 3 hours of overtime worked. This would statutorily clarify the law and its interpretation for all involved, including the courts.

We urge your support of this legislation.

# ALASKA STATE LEGISLATURE

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### SECTIONAL ANALYSIS HOUSE BILL 201

An Act relating to the computation of overtime; and providing for an effective date

- Section 1:** Legislative Findings. Discusses the historical interpretation of AS 23.10.060(b) regarding overtime compensation and indicates that due to some court decisions the Legislature finds it necessary to eliminate any doubt about how the law is to be construed.
- Section 2:** Amends AS 23.10.060(b) to make it clear that overtime compensation will be paid if an employee works in excess of eight hours a day or in excess of 40 hours a week without regard to hours that are worked in excess of eight hours a day.
- Section 3:** Act is retroactive to May 4, 1959.
- Section 4:** Effective date: Immediate



I. Factual Background

Hallam was employed as a seasonal employee with Holland America Line as a bus driver during the 1994 summer tour season. His hourly salary was \$8.00. The last week of Hallam's employment was August 15-20, 1994. During this time he worked 41.25 hours and was paid overtime for 5.5 of those hours. Each of the overtime hours paid was for hours worked over 8 hours a day. Hallam was not paid overtime wages for his last day of employment even though the cumulative total of hours surpassed the 40-hour workweek. Hallam was paid as follows:

Date	Regular Hours	Overtime Hours	Total Hours
8/15/94	8.0	0	8.0
8/16/94	8.0	1.5	9.5
8/17/94	8.0	1.0	9.0
8/18/94	0	0	0
8/19/94	8.0	3.0	11.0
8/20/94	4.25	0	4.25
TOTALS	36.25	5.5	41.75

Hallam's last day of employment was August 20, 1994. He was paid, via automatic bank deposit. Holland America contends that the funds were paid August 28, 1994 and Hallam argues that the funds were not available to him until September 1, 1994. In any event, it was not paid within the statutorily mandated three days.

## II. Class Certification

On July 16, 1997 Hallam filed a motion to certify class. Judge Carpeneti denied this on October 21, 1997 because Hallam, acting *pro se* could not adequately represent the interests of the class. The case was then transferred to district court because Hallam's individual claims could not meet the jurisdictional requirements of Superior Court. A motion to reconsider was filed by Hallam and it was denied. Subsequently, Hallam has requested "conditional class certification" pending finding counsel to represent the class.

As indicated in Carpeneti's opinion denying class certification, the Supreme Court of Alaska has held that a *pro se* plaintiff cannot represent a class under Civil Rule 23(a).<sup>1</sup> While Hallam may adequately represent his own interests *pro se* he cannot adequately represent the interests of others without an attorney. Carpeneti rejected Hallam's argument that AS 23.10.110(b) permitted *pro se* representation of a class. "It merely provides that a class action may be brought for violation of the wage and hour laws, and that an aggrieved plaintiff may be the class representative."<sup>2</sup> Carpeneti further explained his rejection of this argument in his order denying reconsideration.<sup>3</sup>

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<sup>1</sup> *Hertz v. Cleary*, 835 P.2d 438, 442, n.3 (Alaska 1992).

<sup>2</sup> Carpeneti Order Denying Class Certification, 10/21/97.

<sup>3</sup> Order dated 11/18/97.

There is no rule providing for "conditional" class certification. Hallam has had sufficient opportunity to obtain counsel to represent the interests of the potential class and has failed to do so. The order denying class certification is AFFIRMED.

### III. Motion for Leave to Amend Complaint

The last day to file motions to amend pleadings was March 4, 1997. On March 4, 1997 Hallam filed an amended complaint without the required accompanying motion. On March 14, 1997 Holland America filed a notice with the Superior Court advising the Court that it had received Hallam's amended complaint but would not answer until the proper Motion for Leave to Amend was filed. On April 25, 1997 Hallam filed a Motion for Leave to Amend, which was a one-sentence request to amend. The Superior Court denied this motion on June 10, 1997. Judge Carpeneti denied the motion because he found that these claims were not substantially related to the overtime claims asserted in the original complaint. The court found that the claims were time-barred because they do not relate back. On June 23 Hallam filed a motion for reconsideration, which was denied by Judge Carpeneti on July 1, 1997.

The amended complaint would have added four claims: liability for requiring plaintiffs to purchase uniforms, liability for interference with future employment and business opportunities, libel

and slander, and failure to pay Hallam his "tips." Hallam argues that he did not know that he was supposed to file a motion with his amended complaint. Even though he did not file the accompanying motion for leave to amend until a month and a half after he filed the amended complaint, the motion was considered by the court. The motion was denied for substantive reasons, not for lack of timeliness.

The standard of review is abuse of discretion.<sup>4</sup> Judge Carpeneti found that the new claims "have little relationship to the claims now before the court." Judge Carpeneti found that the new claims do not relate back (so that granting the motion would require the defendant to defend claims upon which the statute of limitations had run), and that the defendant would be prejudiced by granting the motion. The claims before the court are claims of overtime pay, incentive pay, and failure to pay within three days. While the new claims relate generally to Hallam's employment, they are substantively different requiring new discovery and evidence.

The court must assess whether the nonmoving party will be prejudiced. Prejudice can result from the opposing party "being put to an added expense, a more burdensome and lengthy trial, or if the issues being raised in the amendment are remote from the scope of

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<sup>4</sup> Bauman v. Day, 942 P.2d 1130, 1132 (Alaska 1997) (citing Betz v. Chena Hot Springs Group, 742 P.2d 1346, 1348 (Alaska 1987)).

the original case."<sup>5</sup> It is not an abuse of discretion to find that the issues raised in the amended complaint are remote from the original scope of the complaint, that additional expenses would be incurred by Holland America for discovery, or that the trial would become considerably more lengthy and burdensome. The order denying the motion for leave to amend is AFFIRMED.

#### IV. First, Second & Fourth Claims for Relief

The first and second claims allege that the defendant failed to pay overtime to plaintiff in accordance to the Alaska Wage & Hour Act. The fourth claim alleges that defendant failed to pay overtime in accordance to the employment contract. The relevant contractual clause states:

I agree, by signing this contract, to work for Westours for the basic wage of \$8.00 an hour. This wage is for straight time for the first eight (8) hours of each day, the first forty (40) hours of each week. I understand that my assignments may result in my working more or less than eight (8) hours per day or forty (40) hours per week. I will only be paid for actual hours worked. For any hours in excess of eight (8) hours in a day or forty (40) hours in a week, overtime compensation will be paid at 1.5 times the basic rate which will be \$12.00 an hour.

A motion for partial summary judgment of the first, second, and fourth claims for relief was first filed April 7, 1997. That motion was originally denied but reconsideration was granted. Before the motion was decided, District Court took over jurisdiction of the

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<sup>5</sup> Rutledge v. Alyeska Pipeline Service Co., 727 P.2d 1050, 1054 (Alaska 1986) (quoting

case. On December 19, 1997 Judge Froelich granted the motion for partial summary judgment and dismissed the first, second, and fourth claims for relief. A Motion for Reconsideration filed by Hallam was denied March 23, 1998.

**A. Statute of Limitations**

AS 09.10.070(3) provides for a 2-year statute of limitations "upon a liability created by statute." Hallam was terminated on August 20, 1994. Under AS 23.05.140(b) Holland America had until August 24, 1994, three working days after employment ended to pay him his due compensation. If Holland America failed to do so, it became liable upon the statute, and Hallam would have two years, until August 24, 1996 to bring suit upon wages due. It was not until 3 days after the last date of employment that the employer's duty arises to pay all wages and other compensation for services due.<sup>6</sup> Hallam's suit is not barred by the statute of limitations.

**B. "Pyramiding" Overtime Calculations**

Hallam argues that he is entitled to all hours worked over 8 hours a day at overtime and all hours worked over forty hours a week (an additional 1.25 hours). The Department of Labor wrote a letter that Holland America submitted as Exhibit G to Appellee's Brief. It

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Estate of Thompson v. Mercedes-Benz, 514 P.2d 1269, 1271 (Alaska 1973).

<sup>6</sup> See Dayhoff v. Temsco Helicopters, 772 P.2d 1085, 1087 (Alaska 1989) (holding statute of limitation for AS 23.05.140(b) does not start to run until violation occurs 3 days after termination) and Reed v. Municipality of Anchorage, 741 P.2d 1181, 1185 (Alaska 1987) (holding that employee's claims for unpaid overtime wages does not start to run until 3

states:

The daily overtime is straightforward. Any hours in excess of eight in a single workday are overtime. Weekly overtime is similar; an employee may work up to 40 straight-time hours in the workweek before any overtime is due.

The Department of Labor has interpreted the overtime requirements of the Alaska Wage & Hour act to mean that forty straight-time hours must accrue before the obligation of paying all additional hours at an overtime wage. The Department of Labor excludes all hours worked over eight hours in a day towards the forty hour requirement. This is the standard method for calculating overtime by the Department of Labor. An employer such as Holland America, who calculates overtime in this manner, is doing so in good faith.

Hallam argues that both regular and overtime hours should be included in the forty hours for the purposes of calculating overtime. AS 23.10.060(b) states:

If an employer finds it necessary to employ an employee in excess of 40 hours a week or eight hours a day, compensation for the overtime at the rate of one and one-half times the regular rate of pay shall be paid.

Holland America's employment contract states:

This wage for straight time is for the first eight hours of each day, the first forty hours of each week.... For any hours in excess of eight hours in a day or forty hours in a week, overtime compensation will be paid....

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days following the termination, when the employer's duty arises).

Hallam argues that the current method used should be struck down because the statute clearly and unambiguously requires the payment of overtime wages for all hours worked over eight in a day and forty in a workweek.

The applicable standard under which this court should review the Department of Labor's interpretation of AS 23.10.060 is the independent judgment standard.<sup>7</sup> While it appears that Holland America calculated overtime wages in accordance with the methods and procedures currently used by the Department of Labor, the clear and unambiguous language of the statute indicates that all hours are to be included in determining the forty-hour workweek. There is no exemption excluding hours worked over eight in a day towards the cumulative workweek total. Summary Judgment is REVERSED AND REMANDED. The District Court is instructed to enter an order in favor of Hallam in the amount of \$21.00 in gross earnings for 1.25 hours of overtime worked in excess of 40 hours a week plus interest at the statutory rate.

#### V. Third and Fifth Claims for Relief

Plaintiff's third claim for relief alleges liability for failure to pay plaintiff within three days of termination of his employment. The fifth claim for relief alleges liability for failing to pay incentive compensation as agreed in the contract. The

District Court entered summary judgment in favor of Holland America on August 3, 1998. Hallam moved for reconsideration and the District Court declined to address the motion.

**A. Failure to Pay within 3 Days of Termination from Employment**

Hallam's original complaint was based on his last paycheck received in 1994 at the close of the regular tourist season. His last day of employment was August 20, 1994 and therefore he argues he should have been paid by August 23, 1994. Hallam signed paperwork indicating he wanted automatic deposit to his bank account. The parties dispute whether the automatic deposit was made August 28, 1994 (as Holland America argues) or September 1, 1994 (as Hallam argues). Either way, there is no genuine issue of material fact as to whether Holland America was timely, they were not.<sup>8</sup> In the worst case scenario, Holland America was six work days late in the automatic deposit.

A violation of AS 23.05.140(d)<sup>9</sup> does not require a penalty. The award of a penalty under this section is within the sound

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<sup>8</sup> See *Tesoro Alaska Petro. v. Kenai Pipe Line*, 746 P.2d 896 (Alaska 1987).

<sup>9</sup> Hallam now argues that his incentive bonus payment was due within three days of termination in spite of a contractual provision that it was to be paid by October 31, 1994. This argument is without merit. In addition, Hallam argues that his "last payment" for the purposes of this statute was not received until April 1997. This occurred after an audit of his employment records revealed some errors in calculations. Holland America issued a check including the "double-the wage" per statute in the amount of \$80.16. The only appropriate inquiry is Hallam's last regular paycheck received approximately nine business days after his termination.

<sup>9</sup> AS 23.05.140(d) states: "...the employer may be required to pay the employee a penalty in the amount of the employee's regular wage, salary, or other compensation from the time of demand to the time of payment, or for 90 working days, whichever is the lesser amount."

discretion of the trial court.<sup>10</sup> Holland America argues that the record supports a finding that the District Court was not clearly erroneous in the exercise of its discretion not to impose a penalty and that the District Court did not abuse its discretion in declining to impose a penalty. Holland America argued that it did not intentionally deprive Hallam of his pay and that following the normal course of automatic deposits, it was deposited. While Holland America does not explain why they do not issue an automatic deposit upon termination of employment within three days, Judge Carpeneti's decision not to impose a penalty is not an abuse of discretion. The summary judgment for the third claim for relief is AFFIRMED.

**B. Failure to Pay Incentive Pay as Contracted**

As part of his compensation package, the contract provides for an "incentive program." It states:

**III. INCENTIVE PROGRAM**

I may be entitled to incentive compensation based on a percentage of my Base Wages, as follows:

1. Accidents/Damage- Up to four percent (4.0%) of my base wages for safety. To qualify for this incentive compensation:
  - (a) I must have no preventable accidents during the period of my employment, as determined by the Westours Safety Department; and
  - (b) no damage can have occurred to equipment and/or properties owned by Westours while under my control due to negligence or any other act determined preventable

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<sup>11</sup> Klondike Indus. Corp. v. Gibson, 741 P.2ds 1161 (Alaska 1987).

by the Safety Department...

2. Job Performance- Up to three percent (3.0%) of my base wages for job performance. I understand that this award will be paid if have no infractions or written warnings in my file relating to performance at the end of my employment. Each performance related (non-accident) infraction during my employment will result in one and a half (1.5) percentage point deduction (i.e. two infractions would eliminate my Job Performance incentive compensation), and each written warning will result in a deduction of one half (.5) percentage point.
3. Customer Service- Up to five percent (5.0%) of my base wages for customer service based on customer ratings of my tours as evidenced by comment cards actually received by Westours Seattle office. Incentive compensation, if any, under this paragraph is computed by taking the arithmetic average of the ratings for safety, courtesy, narration, and grooming on all comment cards... and per the following schedule:

Percentage of base Wages	Average Rating
5%	3.95 or better
4%	3.90-3.94
3%	3.85-3.89
2%	3.80-3.84
1%	3.70-3.79
0%	below 3.70

Holland America argues that the plain and unambiguous language of the contract indicates that the incentive pay is "discretionary." Holland America argues that the word "may" is discretionary in the interpretation of contracts, as opposed to "shall" that is mandatory. Holland America did pay Hallam a bonus, but Hallam contests the amount of the bonus. Holland America argues in its original motion for summary judgment: "The agreement plainly states that the payment of any bonus is discretionary and, if a bonus is

paid, the payment of that bonus follows a schedule set out in the contract."

Holland America elected to pay a bonus to Hallam and therefore obligates itself to follow the contract provisions. It appears that Holland America correctly calculated the bonus for no accidents as he received the full bonus possible. Holland America appears to have correctly calculated the "customer service" bonus as that is set forth in a schedule. Holland America has provided the basis for those calculations and they appear to be valid. The only questionable calculations are in the area for "job performance." Hallam received no bonus in this area. Hallam had one infraction and one written warning. The contract clause specifies deductions for these occurrences.

Each performance related (non-accident) infraction during my employment will result in a 1.5 percentage point deduction... and each written warning will result in a deduction of .5 percentage point.

Since Hallam received one of each, his contractual 3% bonus should have been reduced to 1%. Holland America determined that although Hallam was "eligible" for a 1% bonus for job performance, the Division Manager used his discretion not to award one (Affidavit of Chuck Acker, April 20, 1998).<sup>11</sup> Holland America's argument that

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<sup>11</sup> "It appears that, in the estimation of the Division Manager, the infraction was significant enough that he determined Mr. Hallam would not receive the remaining discretionary 1%." Affidavit of Chuck Acker.

the Division Manager used his discretion not to award the "eligible" one-percent bonus conflicts with its earlier argument that once the bonus is given, it must adhere to the contract provisions.

Based on the mandatory language of the contract terms, the incentive pay is conditional upon certain performance, but is not discretionary if the performance is made. If an employee meets the performance aspects of the contract, Holland America is under a contractual obligation to pay the full bonus that one is eligible for. Hallam is entitled to the remaining 1% bonus in the amount of \$68.53. The summary judgment for the fifth claim for relief is REVERSED AND REMANDED. The District Court is instructed to enter judgment in the amount of \$68.53 plus the statutory interest rate.

#### VI. Attorney Fees & Costs Awarded

Upon disposition of all claims, the District Court indicated that attorney fees and costs would be awarded upon motion by the defendants. This order was entered on August 3, 1998. On August 14, 1998, Holland America filed the motion for attorney fees and costs. They moved for attorney fees in the amount of \$32,220 and costs in the amount of \$2,797.17. Hallam opposed the motion arguing that it was untimely. The court's final order was entered on August 3, 1998 and distributed by courtbox the same date. The motion was filed August 14, 1998. As Rule 82 states:

"The motion must be filed within 10 days after the date shown in the clerk's certificate of distribution on the judgment.... Failure to move for attorney's fees within 10 days, or such additional time as the court may allow, shall be construed as a waiver..."

It is within the court's discretion to allow for a one-day late motion. The court will not reverse the attorney fees and costs award based on timeliness.

The court entered judgment requiring Hallam to pay \$2,797.17 in costs and \$6,444 in attorney fees. Hallam argues that Grimes v. Kinney Shoe Corp, 938 P.2d 997 (Alaska 1997) provides that Rules 79 and 82 do not apply to wage and hour cases. Hallam's argument fails. Holland America points out that Grimes interpreted the old AS 23.10.110(c). That statute was amended in part to specifically allow costs and attorneys fees to defendants. Awards of attorney fees are reviewed on an abuse of discretion standard. There was no abuse in discretion in awarding 20% of actual attorney fees in this case pursuant to the Rules of Civil Procedure.

Finally, the court now addresses whether the reversal of summary judgment on the issues of calculation of overtime wages or payment of incentive pay pursuant to contract, changes the prevailing party for the purposes of the award of attorney fees and costs. Hallam's claims for relief as granted above total \$89.53 plus interest. When the court questioned Hallam about the prospect

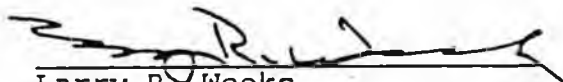
of settling his individual claims, Hallam stressed to the court that he felt that settling his individual claims would leave other members of the potential class without recourse. In so doing, the court understands Hallam's main goal in the vigorous pursuit of this action was to benefit an entire class of workers. However, as discussed above, Hallam's class certification has been denied and that denial has been affirmed. "A litigant who successfully defeats a claim of great liability may be the prevailing party, even though the other side is successful in receiving an affirmative recovery."<sup>12</sup> Holland America was successful in defeating Hallam's class certification, which was a potentially large liability for them. Holland America is the prevailing party for the purposes of attorney fees and costs. The award of attorney fees and costs is AFFIRMED.

VII. CONCLUSION

This case is REMANDED to District Court for a finding and judgment consistent with this order.

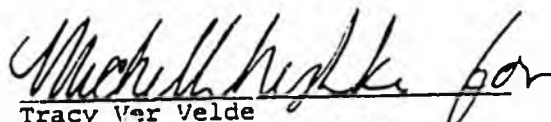
IT IS SO ORDERED.

Dated April 7, 1999.

  
Larry R. Weeks  
Superior Court Judge

<sup>12</sup> Alaska Placer Co. v. Lee, 553 P.2 54, 63 (Alaska 1976).

I certify that on the 29<sup>th</sup> day of April 1999, I served the above order to Stuart Hallam (by U.S. Mail) and Robert Blasco (by courtbox).

  
Tracy Ver Velde  
Secretary to Judge Weeks



**NFIB Alaska**

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**National Federation of Independent Business**

**Statement of Support**

**of HB 201**

**Computation of Overtime**

**April 22, 1999**

On April 7<sup>th</sup>, 1999 Judge Larry Weeks made a Superior Court ruling that will significantly increase the cost of doing business in the State of Alaska.

Here is an example of how this might impact a small business that employs 8 people, 5 days a week, 10 hours a day at a rate of \$10 per hour. Under the recent court ruling, not only would the employees receive two hours a day of overtime at a rate of \$15 per hour, they would also receive an additional 10 hours of overtime at \$15 per hour for the hours worked over 40 hours.

Under the traditional interpretation of the wage and hour laws, each employee would receive 40 hours of regular time pay and 10 hours of overtime for a total of \$550 per week. The additional 10 hours of overtime required by the recent court decision would cost the employer another \$150 per week, per employee. Multiply this by the 8 employees and the cost is \$1,200 per week or \$4,800 per month! In this example, the employer would have a 27% increase in their cost of labor. Few small businesses have the ability to survive with this type of increase in labor cost.

HB 201 fixes this problem and returns us to the long-standing interpretation of the overtime law.

NFIB/Alaska urges support for HB 201

Submitted by Thyes Shaub on behalf of NFIB/Alaska.

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**National Federation of Independent Business**

217 Second Street, Suite 206 • Juneau, AK 99801 • 907-463-5128 • Fax 907-463-5128





Alaska Laundry Inc.  
1114 Glacier Ave.  
Juneau, Alaska 99801

Representative Norm Rokeberg  
Alaska State Legislature

April 22, 1999

Re: HB201

Dear Representative Rokeberg,


The recent decision by Judge Larry Weeks regarding calculation and payment of overtime will be a hardship on our company. Depending upon individual work schedules and overtime situations this decision will add significantly to our labor cost with no offsetting increase in efficiency.

From my understanding of the decision it appears that we will have to pay for overtime on a significant amount of regular time. This decision will also effect the State and Local government's hourly employees as well as the calculations that determine the pay of salaried employees. This decision will bring a whole new approach to all employee pay with consequences and costs that few can foresee.

Beyond the increase in costs there is the calculation burden imposed by this decision. We have invested in computerized systems to record and calculate the time for all hourly employees saving a significant amount of time for our company. Our programs will not support this kind of calculation without extensive and expensive reprogramming. Now every time card must be recalculated manually to the dictates of the Weeks decision effectively making our investment in this technology wasted.

HB 201 solves the problems created by the Weeks decision and I thank you for introducing this urgently needed legislation.

Sincerely,



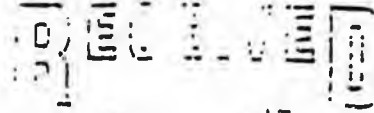
E. Neil MacKinnon  
President

DEPARTMENT OF LABOR

WAGE AND HOUR ADMINISTRATION  
LABOR STANDARDS & SAFETY DIVISION

3301 Eagle Street, Suite 301  
P.O. Box 107021  
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Phone: (907) 269-4800  
Fax: (907) 269-4818

April 25, 1997  
Dictated: 4/24/97



WHOL #120

Mr. Robert Blasco  
Robertson, Monagle & Eastaugh  
801 W. 10th, Suite 300  
Juneau, AK 99801

Dear Mr. Blasco:

You have asked for clarification of the overtime requirements of the Alaska Wage and Hour Act. As you know, the Act requires that overtime be paid for hours of work that exceed eight in a single day or 40 in a week. A question has arisen as to how those overtime hours are counted.

The daily overtime is straightforward. Any hours in excess of eight in a single workday are overtime. Weekly overtime is similar; an employee may work up to 40 straight-time hours in the workweek before any overtime is due.

There has been some confusion as to how to count the hours when both daily and weekly overtime is worked in the same workweek. Overtime hours are only counted once. If an employee works, for example, ten hours in one day, a daily audit would show that the employee has two hours of overtime coming.

If in that week the employee worked the 10-hour day and four 8-hour days, the employee would have worked 42 hours total. Auditing on a weekly basis, the worker should be paid 40 hours of straight-time and two hours of overtime. If the employer has paid the two hours of overtime for the daily occurrence, they would also have paid the employee correctly under the weekly standard.

I hope this information is helpful. If you have any further questions, do not hesitate to contact our office.

Sincerely,

J. R. (Randy) Carr  
Chief  
Labor Standards

JRC:cah  
blasco

P 1 Exhibit G

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

2 FIRST JUDICIAL DISTRICT AT JUNEAU

3 STUART HALLAM, Individually )  
4 and as class representative, )

5 Plaintiff, )  
6 )

7 v. )

8 HOLLAND AMERICA LINE, INC. )  
9 d/b/a WESTOURS MOTOR COACHES )  
10 INC., )

11 Defendant. )

Case No. 1JU-96-1734 Civil

12 AFFIDAVIT OF TOM CASHEN

13 I, Tom Cashen, being first duly sworn, state as follows:

14 1. I am the Commissioner of the Department of Labor for the State of  
15 Alaska. I have served as the Commissioner for three years.

16 2. I have 29 years experience in the field of labor relations, including  
17 negotiating labor agreements, drafting legislation, and drafting regulations.

18 3. It is my understanding that the plaintiff in this case claims he is entitled  
19 to overtime in accordance with what is commonly referred to as "pyramiding" of overtime.  
20 "Pyramiding" means that the claimant wants to count his overtime hours twice--once if he  
21 works in excess of 8 hours in one day and a second time if his hours for the week exceed 40  
22 hours.  
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PHONE: (907) 586-3340


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4. I have read the letter of Randy Carr, which is attached to this affidavit as Exhibit A. Mr. Carr's letter accurately expresses the interpretation of AS 23.10.060 (b) followed by the Department of Labor with respect to overtime claims. This has been the consistent interpretation as long as I have been Commissioner and, in my experience, since the enactment of the legislation.

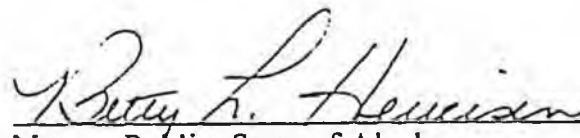
5. I have not reviewed the actual hours worked or claimed by this plaintiff. It is my understanding that the plaintiff did not submit a wage and hour claim to the Department of Labor. If he had submitted a claim for overtime, and the overtime claimed was calculated based on "pyramiding", the Department of Labor would have disallowed the claim.

FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 26<sup>th</sup> day of February, 1998.

  
\_\_\_\_\_  
TOM CASHEN

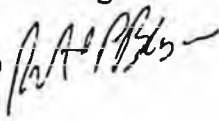
SUBSCRIBED AND SWORN TO before me this 26<sup>th</sup> day of February, 1998.

  
\_\_\_\_\_  
Notary Public, State of Alaska  
My commission expires: 2/12/99

ROBERTSON, MONAGLE & EASTAUGH  
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M E M O R A N D U M

TO: Representative Rokeberg  
FROM: Robert P. Blasco   
DATE: April 14, 1999  
SUBJECT: PROPOSED LEGISLATION CLARIFYING AS 23.10.060(b)

The Alaska Superior Court, Judge Weeks, recently ruled that overtime hours are to be counted twice for purposes of compensation under the existing AS 23.10.060(b). The pertinent pages of that decision are attached. This double compensation for overtime is known as "pyramiding."

The decision of the court is contrary to how the Department of Labor has always interpreted AS 23.10.060(b). Attached are an affidavit of former Commissioner of Labor Tom Cashen and a letter of Randy Carr. The reason the statute should be clarified is because the Court's decision specifically disregarded the historical interpretation and application by the Department of Labor and, consequently, by all employers in the state—including the State of Alaska.

Unless clarified, the potential impact on employers, including the State of Alaska, is tremendous. Here is an example of what happens under the Court's decision:

Assume Employee worked the following schedule for a total of 43 hours:

Monday	11 hours	Thursday	8 hours
Tuesday	8 hours	Friday	8 hours
Wednesday	8 hours		

As to Monday, everyone agrees that Employee is entitled to 3 hours of overtime. The issue is as to Friday. Under the Department's interpretation and the interpretation of employers, no overtime would be due as to Friday since Employee worked 43 hours during the week and has already been paid for 3 hours overtime. Under the Court's

Representative Rokeberg  
April 14, 1999  
Page No. 2

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ruling, Employee would receive overtime for 3 hours on Friday because, in computing the 40 hours under the statute, one must include the 3 overtime hours worked on Monday. Consequently, Employee received 6 hours of overtime pay for the week even though he/she only worked 43 hours.

We propose the attached legislation simply as clarification. The attached legislation is consistent with the interpretation and policy of the Department of Labor, is consistent with how employers have applied the law, and is fair to the employees because they are fully compensated with overtime for actual hours worked.

Please do not hesitate to call me with any questions of if there is any other information I can provide.

RPB/yd